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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 229.

DISTRICT OF COLUMBIA,

vs.

CHARLES H. FRED.

BRIEF ON BEHALF OF THE RESPONDENT.

HAWKEN & HAVELL,
By S. McCOMAS HAWKEN,
Attorneys for Respondent.

January 13, 1930.

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STATEMENT OF FACTS.

The respondent, a bona fide resident of the State of Virginia was on November 8th, 1926, while then a resident of the District of Columbia, issued a permit to operate an automobile in said District, which permit was revoked on the 15th day of December of the same year. One year and four months thereafter said respondent became a resident of the State of Virginia at a place known as Hamilton, being a point about 50 miles distant from the territorial limits of the District of Columbia. On August 6th, 1928, being a year and eight months after the revocation of his permit in

the District of Columbia, there was issued to him by the proper authorities of the State of Virginia a motor vehicle registration card entitling him to operate a motor vehicle in that state. In obtaining said registration card, the respondent complied with all the laws of the State of Virginia. In addition to the registration card, the Virginia authorities issued to the respondent automobile tags for his automobile. On the 3d day of September, 1928, after the respondent had been in the District of Columbia about four hours, he was arrested and charged with operating an automobile in said District after the revocation of his driver's permit; at the time of his arrest, the respondent exhibited the registration card issued to him by the State of Virginia and had on his automobile the proper Virginia automobile tags.

ARGUMENT.

There is but a single question involved in this case and that is, as a bona fide resident of the State of Virginia, had the respondent the right to operate an automobile in the District of Columbia, nothwithstanding the fact that his District permit had been revoked prior to his becoming a resident of Virginia. It will be noted that there was no question raised in the lower court that the respondent was not a bona fide resident of the State of Virginia, nor was it contended by the District that the purpose of the respondent in becoming a resident of the State of Virginia was in order to evade the traffic laws of the District of Columbia.

It is our contention that Section 8 (a) of the traffic act of 1925, as amended July 3d, 1926, gave the respondent as well as all other bona fide residents of the State of Virginia

the right to operate an automobile in the District of Columbia. In Section 8 (a) of the traffic act, it is provided that non-residents of the District of Columbia shall have and be allowed to exercise the same rights with respect to the operation of motor vehicles in the District of Columbia as are granted to residents of the District of Columbia to operate such motor vehicles in the state from which the non-resident came. Said Section 8 (a) provides as follows:

"NONRESIDENTS.

"Sec. 8 (a). The owner or operator of any motor vehicle who is not a legal resident of the District, and who has complied with the laws of any State, Territory, or possession of the United States, or of a foreign country or political subdivision thereof, in respect of the registration of motor vehicles and the licensing of operators thereof, shall, subject to the provisions of this section, *be exempt from compliance with section 7 and with any provision of law or regulation requiring the registration of motor vehicles or the display of identification tags in the District.* Such exemption shall cover the period immediately following the entrance of such owner or operator into the District equal to the period for which the director has previously found that a similar privilege is extended to legal residents of the District by such State, Territory, or possession of the United States, or foreign country or political subdivision thereof. The director shall from time to time ascertain such privileges and cause his findings to be promulgated."

In accordance with the directions to the Director of Traffic contained in the foregoing Section, the said Director on the 1st day of October, 1925, made the following proclamation:

DIRECTOR OF TRAFFIC.

Washington, D. C., October 1st, 1925.

Right of Non-residents to Operate Motor Vehicles in the District of Columbia.

The District of Columbia Traffic Act of 1925 has established certain principles on which a non-resident may operate a motor vehicle in the District of Columbia.

Section 8 of this Act provides that "persons not legal residents of the District of Columbia but who have complied with all of the laws of their home state with regard to the registration of motor vehicles and licensing of operators thereof shall be exempt from compliance with Section 7 of the Act, regarding operators' permits, for a period of time immediately following the entrance of such owner or operator into the District, equal to the period for which the Director has previously found that a similar privilege is extended to residents of the District by such state." In accordance with this provision the Director has ascertained that residents of the District are not permitted to drive automobiles in the following states when they may have in their immediate possession an operator's permit duly issued by the Director unless the automobile so driven bears District registration tags; and then only for the periods listed after the state named:

State	*Reciprocity Period*
Arizona	4 Months
Connecticut	15 Days
Delaware	Unlimited
Maine	"
Maryland	90 Days
Massachusetts	30 Days
New Jersey	15 Days
Oregon	3 Months
Rhode Island	30 Days
Vermont	Unlimited
Virginia	"
West Virginia	3 Months

It is, therefore, apparent that residents of these states are violating the law when driving in the District without a District operator's permit, unless the car driven by them bears the registration tags of their home state.

(In the case of Virginia no operator's permit is required.)

The following named states do not issue or require operator's permits and a legal resident of one of these states may operate any automobile in the District of Columbia for the period of time set after the name of each state, in accordance with the rule of reciprocity, when such legal resident of such state has in his possession proof that he has complied with the laws of his home state with regard to registration of motor vehicles or the procurement of certificate of title. In other words, such non-resident must, at all times, when operating a motor vehicle in the District of Columbia have in his possession (his immediate possession) either a registration certificate made out in the name of the operator or proof that a registration certificate or a certificate of title has been issued in his name.

State	*Reciprocity Period*
Alabama	Full Reciprocity
Arkansas	90 Days
Colorado	90 Days
Florida	Full Reciprocity
Georgia	30 Days
Idaho	90 Days
Illinois	6 Months
Indiana	60 Days
Iowa	Full Reciprocity
Kansas	60 Days
Kentucky	Full Reciprocity
Louisiana	90 Days
Minnesota	2 Months
Mississippi	30 Days
Missouri	90 Days
Montana	90 Days
Nebraska	Full Reciprocity
Nevada	90 Days
New Mexico	90 Days
North Carolina	60 Days
North Dakota	30 Days
Ohio	Full Reciprocity
Oklahoma	60 Days
South Carolina	30 Days
South Dakota	Full Reciprocity
Tennessee	30 Days
Texas	30 Days
Utah	6 Months
Wisconsin	Full Reciprocity
Wyoming	90 Days

The following named states issue and require operators' permits and a legal resident of any of these states may operate any motor vehicle in the District for the period of reciprocity when he has in his immediate possession a driver's permit issued in his name by such state:

State	*Reciprocity Period*
California	6 Months
New Hampshire	1 Week
New York	Full Reciprocity
Pennsylvania	" "
Washington	" "

Any person—resident or non-resident—may operate any car in the District when he has in his immediate possession a District operator's permit duly issued to him by the Director.

M. O. ELDRIDGE,
Director of Traffic.

It will be observed from a reading of the said proclamation that no operator's permit is required to be obtained or possessed by the operator of an automobile in the State of Virginia. Therefore, a resident of the State of Virginia authorized to operate an automobile therein may also operate the said machine in the District of Columbia without a permit and likewise a resident of the District authorized to operate an automobile in the District does not have to secure a permit to do so in Virginia. This proclamation setting forth reciprocal rights of automobilists in Virginia and the District of Columbia was in force on the said 3rd day of September, 1928, without change or alteration.

The trial judge ignored Section 8 (a) aforesaid and also the proclamation, on the theory that they were not applicable to this case.

In Section 13 (d), the language is general and says that anyone who operates an automobile after the revocation of his license shall be guilty of the offense, while Section

8 (a) is specific and applies exclusively to nonresidents and expressly says that residents of other States shall have the same right in the District of Columbia that residents of the District of Columbia have in their respective States. If it had been the intention of Congress to exclude those persons who had been residents of the District of Columbia and whose permits had been revoked but who had become residents of other States thereafter, Congress would have so declared. Congress did not, however, exclude such persons, and, therefore, under the well known rule of construction *expressio unius est excusio alterius*, they clearly come within the said section. *Murphy, by next friend* v. *Carlin, et al.*, 113 Mo., p. 112.

That the construction of respondent of Section 8 (a) is correct is shown by the interpretation placed thereon by the Director of Traffic himself. In the proclamation, *supra*, it is provided that residents of the State of Maryland and the District of Columbia have reciprocal rights for a period of 90 days, and until an agreement was entered into between the Director of Traffic and the authorities of Maryland, a person had the right to operate an automobile in the District of Columbia after having become a resident of the State of Maryland, notwithstanding the fact that prior to his residence in the State of Maryland his District permit had been revoked. The said agreement is as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA

OFFICE OF DIRECTOR OF TRAFFIC

Washington, D. C.

April 19, 1928.

RECIPROCITY WITH MARYLAND ON AUTOMOBILE DRIVERS' PERMITS

The order of the Director of Traffic, dated March 15, 1928, dealing with the rights of Maryland residents to operate motor vehicles

in the District of Columbia, is hereby rescinded and the following order issued in accordance with Section 8 of the Traffic Act.

An amendment to the Motor Vehicle Law of Maryland provides that effective on and after June 1st, 1927, non residents are permitted to operate automobiles in that state, except when the driving is done for compensation, provided the person owns a permit issued by his own state or the District of Columbia, based on an examination as to qualification to operate motor vehicles. Maryland requires a chauffeur's license (annual) for the operation of a vehicle for compensation or hire.

Residents of the District of Columbia who have secured motor vehicle drivers' permits in the regular manner will, under the new Maryland Law be permitted to operate automobiles in the state of Maryland, except when the driving is done for compensation or for hire.

In view of the above it is ordered that residents of the state of Maryland owning motor vehicle drivers' permits in that state may operate any automobile in the District of Columbia without providing himself with a District of Columbia permit, except when the driving is done for compensation or for hire, except also as to any person whose District of Columbia operator's permit has been revoked or suspended, while such order of revocation or suspension is in effect.

W. H. HARLAND,
Director of Traffic.

No such agreement has ever been entered into between the authorities of the District of Columbia and the State of Virginia and in the absence of such an agreement, it is fair to assume that the authorities of Virginia would not enter into such an agreement.

After the respondent became a resident of the State of Virginia, he lost his right to either get a new permit in the District of Columbia or have his old permit renewed because permits are granted by the Traffic Director only to residents of the District of Columbia. If the contention of the petitioner is correct then if a resident of the District of Columbia loses his right to operate a machine in the District because of the revocation of his permit and

then moves to another state, no matter how long he may live in that state he would be forever prevented from operating a car in the District of Columbia. This certainly could not have been the intention of Congress. From the brief of the petitioner, it would appear that the traffic act passed in 1925 was the first attempt to regulate traffic in the District of Columbia; such, however, is not the case. Prior to the traffic act, the Commissioners of the District of Columbia passed various ordinances dealing with the same subject matter as contained in said act, and the provisions of the act of 1925, with very few additions, embody the ordinances theretofore in effect in the District of Columbia. The traffic act merely transferred from the Commissioners to the Traffic Director the authority to enforce the various traffic rules and regulations. On page 8 of the petitioner's brief, it is stated that there was no evidence that reciprocity existed between Virginia and the District of Columbia or that the Director of Traffic of the District of Columbia had previously so found. In the instruction asked in the Police Court on behalf of the respondent Section 8 (a) was specifically called to the attention of the court and the proclamation of the Director of Traffic made pursuant thereto was part and parcel of Section 8. The Court refused the instruction because, as is shown on page 7 of the Record, the respondent had not shown that an agreement had been entered into between the District of Columbia and the State of Virginia under which one whose license had been revoked in the District and had then moved to Virginia had the right thereafter to operate a machine in the District of Columbia, notwithstanding the fact that he had procured from the State of Virginia the right to operate an automobile therein. It was, and is our contention, that the Act of Congress not having excluded such persons, that the respondent came

within its terms. The trial court ignored Section 8 (a) and also the proclamation under which one who had the right to drive an automobile in the State of Virginia also had the right to operate one in the District of Columbia. The present case is directly in line with the *King* case in 51 Appeals D. C. 160. In the *King* case, King had been a resident of the District of Columbia. The Commissioners of the District of Columbia under Paragraph E, Article 12 of the Municipal Regulations, revoked King's permit to operate a machine in the District of Columbia. King then became a resident of the State of Virginia, obtained the right to operate a machine in said State and then later drove the machine to the District of Columbia and was arrested for driving without a permit and was convicted, which conviction was reversed by the Court of Appeals, because, under the agreement existing between the State of Virginia and the District of Columbia, such a person was not excluded just as such a person is not excluded by Section 8 (a) of the traffic act. The only difference that we can see between the *King* case and the case under consideration is that there is a different penalty.

In the brief of the petitioner, it seems to us that there is an effort to obscure the fact that King's permit had been revoked by the District authorities prior to the time that he became a resident of the State of Virginia. The *King* case was decided in 1922, three years prior to the passage of the traffic act. It must be assumed that Congress was familiar with the *King* case, and if it had been the intention of Congress to interfere with states' rights and to exclude persons in the category of the respondent from its provisions, then in enacting Section 8 (a) of the traffic act which deals exclusively with non-residents, Congress would have so stated. This section does not so provide, therefore, it would seem to follow that such persons come under

its protection. It will appear from a reading of the agreement referred to in the *King* case and Section 8 (a) of the traffic act that they are substantially the same. The agreement is as follows:

> "Anyone legally entitled to operate a motor vehicle in the State of Virginia shall be entitled to operate such vehicle in the District of Columbia, and without having District of Columbia license tags, and without having a District of Columbia driver's permit, so long as the Virginia authorities permit residents of the District of Columbia, legally entitled to operate vehicles there, to operate same within the State of Virginia and without Virginia license tags, and without a Virginia driver's permit. . . . That the State of Virginia, in which the defendant has his legal residence extends the same privilege to the motor vehicles owned or operated by legal residents of the District of Columbia."

On page 12 of the petitioner's brief, it is stated:

> "The court found that the District of Columbia had not, in said motor-vehicle reciprocity agreement, excluded residents of the State of Virginia whose District of Columbia operators' permits had been revoked. The case, therefore, was reversed and remanded on January 3, 1922".

The foregoing statement fortifies our position in this case because the Act of Congress does not exclude such a person. It is also stated in the petitioner's brief, on page 14, that the Court of Appeals considered only two sections of the traffic act. There are only two sections involved in this case and those are Section 8 (a) and Section 13; being the only ones, it was not necessary to consider any other section.

The object of all traffic ordinances and acts is to protect the public, and the ordinances passed by the District Commissioners prior to the traffic act of 1925 had such object in view, and those ordinances were practically the same as the provisions of the traffic act. On page 19 of the petitioner's brief, it is stated:

> "Following the decision of the Court of Appeals to its logical conclusion, if Fred, within a day or two after he had filed with the Commissioners an appeal from the order of the Director, had stepped across the line in the State of Virginia and there registered his motor vehicle and procured from that State a registration card, he would have had the right, under Section 8, to operate a motor vehicle in the District. . . ."

We say, no. Because that would be a fraud upon the District and would show that he had merely gone there for the purpose of evading the District laws. The question, as we view it, is determined by whether or not such a person was a bona fide resident of the State of Virginia. Each case, of course, must be governed by the facts surrounding it. It was one year and eight months after the revocation of respondent's permit before he applied to the Virginia authorities for the right to operate an automobile. In view of this fact, how can it fairly be said, as stated in the brief of petitioner, that "he, (respondent,) was in the nature of an impostor". On page 24, in black type, it is stated:

> "In construing a statute the provisions of the whole statute, its object and policy must prevail over a single provision thereof, and Section 13 (d) of the District Traffic Act controls and is paramount to the prior Section 8, relating to non-residents."

The petitioner fails to point out any section that deals with the subject matter of this case in addition to Sections 8 (a) and 13. We contend, as heretofore stated in this brief, that Section 8 (a) deals exclusively and specifically with the rights of non-residents, while Section 13 merely contains general terms. On page 32 of the brief, in black type, it is stated:

> 3. "The lower court erred in finding that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia under and by virtue of which a resident of the District of Columbia whose operator's permit was revoked, could thereafter continue to operate a motor vehicle in the District of Columbia by becoming a resident of the State of Virginia, and licensing and registering his vehicle under the laws of that State."

The lower Court made no such finding as intimated in said paragraph 3. There was no contention in the trial court or the Court of Appeals that the Director of Traffic had entered into a reciprocal agreement with the State of Virginia regarding the revocation of permits, but it was argued that by virtue of Section 8 (a) and the proclamation of the Director of Traffic that reciprocal rights existed and that respondent came within its provisions.

CONCLUSION.

We submit in conclusion that respondent had the right to rely upon the decision of the Court of Appeals in the *King* case and the provisions of Section 8 (a) of the traffic act and to assume he had the right after obtaining the registration card in Virginia to operate a machine from time to time in the District of Columbia. It would be un-

reasonable to believe that Congress intended to deny forever a person the right to operate an automobile in the District of Columbia who had become a resident of another state merely because at some previous time his permit had been revoked in the District of Columbia. As before stated after becoming a bona fide resident of the State of Virginia, the respondent did not have the right to secure a permit from the Director of Traffic in the District of Columbia. It surely was not the intention of Congress to put a man whose permit had been revoked under a disability and punish him for becoming a resident of another state. If this alleged offense had occurred a quarter of a century instead of 18 months after the revocation of respondent's permit, he would still be subject to punishment, if the contention of the petitioner is correct, under Section 13.

We respectfully submit that the decision of the Court of Appeals should be affirmed.

HAWKEN & HAVELL,

By S. MCCOMAS HAWKEN,

Attorneys for Respondent.

January 13, 1930.